Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

Supreme Court of the United States

In re George Dunbar Prewitt, Jr.

On Petition for Writ of Certiorari to the Fifth Circuit

Petition for Writ of Certiorari to the Fifth Circuit

George Dunbar Prewitt, Jr.
P.O. Box 1226
Greenville, MS 38702-1226

Questions Presented For Review.

I. The 5th Circuit erred in applying forum analysis to a First Amendment claim which seeks access to the **public areas** of a federal court.

II. The 5th Circuit committed jurisdictional and double jeopardy errors in concluding that the invalidity of the April 1, 1996 banishment order rendered moot my claim that the February 27, 1996 sanctions order, the May 30, 1997 disbarment order, and the July 24, 2003 banishment order constituted multiple punishment for the same 8-20 year-old writings.

III. The 5th Circuit erred in concluding that the district court provided me with adequate notice of the charges against me and in failing to address my void-for-vagueness issue.

IV. The 5th Circuit erred in failing to address my claim that the July 24, 2003 banishment order violated the Free Exercise and Establishment Clauses of the First Amendment.

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Opinions Below

The December 17, 2003, unpublished decision of the 5th Circuit is Appendix page 1a. The 5th Circuit's January 26, 2004 denial of my Petition for Panel Rehearing is Appendix page 4a.

Statement of Jurisdiction

The jurisdiction of the Supreme Court is invoked under Supreme Court Rule 10 and 28 U.S.C. 1254(1).

Constitutional Provisions Involved

This case involves 8-20 year-old **writings** which have been termed anti-semitic and true threats, and used as a **jurisdictional** and **punitive** basis for a July 24, 2003 banishment order which bars me from entering the **public areas** of the federal courthouse at Greenville, Mississippi. The same **writings** were earlier used (1) as the basis for a February 27, 1996 sanctions order (which barred me from filing federal lawsuits and fined me over $50,000) (2) for a May 30, 1997 disbarment order, and (3) and the basis for an April 1, 1996 banishment order which was later declared void due to an absence of notice and an opportunity to respond. Thus, this case involves (1) the Speech, Free Exercise, and Establishment Clauses of the First Amendment, (2) the multiple punishment and personal jurisdiction (notice) provisions of the Fifth Amendment, (3) and the case or controversy requirement of Article III, Section 2.

Statement of the Case

This case concerns the July 24, 2003 order which is the third punishment in 7 years for the same written words that are at least 8 years old, with one set of words being at least two-decades-old. The two-decades-old words were in a recusal motion in which I **asked** U.S. District Judge L.T. Senter if there was any truth to the persistent rumor that he had been at the scene of a lynching as a young man. In fact, the district court judge, in his July 24, 2003 memorandum, simply quoted, on page 8, portions of the February 27, 1996 sanctions memorandum as the basis for the July 24, 2003 banishment order. The February 27, 1996 sanctions memorandum, as quoted by the district judge on page 8 of the July 24, 2003 memorandum, claimed (1) that I harassed people by "filing frivolous lawsuits against them", (2) that I had "a history of making outrageous, scandalous and unfounded accusations against members of the judiciary, (3) that I asked for one of my appeals to be heard by a court other than the 5th Circuit, and (4) that I accused one judge of "participating in the lynching of a black youth."

The district court, on page 13 of the July 24, 2003 memorandum, also claimed that "Prewitt's sanctionable conduct" was based on the fact "that Prewitt has long engaged in a pattern of conduct in which he exacts revenge against those who differ with him by filing and relentlessly pursuing frivolous lawsuits against those perceived antagonists in federal and state court." The district court, on pages 9 and 21 of its July 24, 2003 banishment memorandum (Appendix page 7a) also claimed that my two-decades-old recusal motion constituted "outrageous, disrespectful, and scandalous **conduct**..." (emphasis

added). The district court's February 27, 1996 sanctions memorandum, on page 10, had earlier punished the same recusal motion and language it characterized as "outrageous" and "scandalous".

The one difference between the February 27, 1996 sanctions memorandum and the July 24, 2003 banishment memorandum is that the district court judge, who was appointed to the federal bench on November 1, 2001, interpreted my 8-20-year-old writings as "threats of war against judges by a licensed attorney." However, (1) the district judge overlooked the district court's May 30, 1997 disbarment order (Appendix page 39a) which claimed that my disqualification, from the district court's bar, was "Implicit" in the February 27, 1996 sanctions order, and (2) the district judge simply made up, out of whole cloth, the claim that my writings made "threats of war against judges".

Finally, an April 1, 1996 banishment order punished me a fourth time for the same writings less than 33 days after the February 27, 1996 sanctions order. The April 1, 1996 banishment order was issued sua sponte, by a magistrate judge who failed to provide me with notice, and the April 1, 1996 banishment order was declared void 7 years later because of the absence of due process. It was **apparently** after I filed the 2002 motion, to have the magistrate judge's April 1, 1996 banishment order declared void, that the district judge suddenly discovered that my writings constituted "threats of war against judges".

I say **apparently** because the first indication that I received, that the district judge regarded my 8-20 year-old writings as constituting "threats of war against judges" was when I received my copy of the July 24, 2003 banishment order in which it was contained. Neither of the **two** show

cause orders (Appendix pages 37a, 38a) indicated that my writings were regarded as "threats". Neither of the **two** show cause orders provided me with notice of the laws that my writings violated. In fact, the district judge, on page 19 of the July 24, 2003 banishment memorandum, wrote that notice to me, after I objected to the absence of adequate notice, consisted of the district court's reading of "the specific passages at issue to Prewitt" and giving me "the opportunity to answer them, one at a time" on the June 12, 2003 morning of the **second** show cause hearing. Due process requires an opportunity to be heard "at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545 (1965), In Re Ruffalo, 390 U.S. 544 (1968).

The 5th Circuit rejected my claims (1) that the district court lacked subject matter jurisdiction, because of the absence of a case or controversy, and held that Chambers v. NASCO, 501 U.S. 32 (1991) afforded the district court subject matter jurisdiction, and (2) that the district court's **two** show cause orders deprived me of adequate notice by failing to specifically cite the sanctionable actions and the laws violated by those actions. The district court held (1) that my Freedom of Speech rights were not violated, under the reasonableness standard, because the courthouse is not a public forum and because the district court had found that my writings indicated that I was a security threat, (2) that I had waived my right to have the 5th Circuit address my void-for-vagueness issue, the mandate rule (lack of notice) issue, and the Free Exercise and Establishment issues, (3) that my claim, that I had received multiple punishments for the same writings, was rendered moot by the fact that the April 1, 1996 banishment order was void, and (4) that my claim, that all of the punishments were imposed to prevent

me from raising voting rights issues from which the judges who imposed the punishments had personally benefited prior to their elevation to the federal bench, could be analyzed as to whether the district judge should have recused himself (because the district judge refused to consider the judicial corruption claim noted above).

Reasons for Granting the Writ

1. The 5th Circuit erred in applying forum analysis to a First Amendment claim which merely seeks physical access to the public areas of a federal court

The 5th Circuit should have applied strict scrutiny, rather than forum analysis, to a July 24, 2003 banishment order which denies me physical access to criminal trials and court documents. My right to speak at the district court has been ended by the May 30, 1997 disbarment order. What the July 24, 2003 banishment order does is to prevent me from attending criminal trials and reviewing court documents in the clerk's office, and it is that fundamental right that I seek to have vindicated in this case, a fact which requires strict scrutiny rather than forum analysis.

However, whether the banishment order is reviewed under forum analysis or strict scrutiny analysis, the banishment order is illegal because it punishes pure speech. See Texas v. Johnson, 491 U.S. 397 (1989) ("The government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word.") "If there is a bedrock principle underlying the First Amendment, it is that the government may not

prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Id.,.

In Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 473 U.S. 788 (1985), this Court held that access "to a nonpublic forum, however, can be restricted as long as the restrictions are 'reasonable and [are] not an effort to suppress expression merely because public officials oppose the **speaker's view**.'" (emphasis added). Viewpoint discrimination, which eliminates one side of the argument before a governmental body, is always unconstitutional, and it was my claim, before the courts below, that the banishment order was part of a series of punishments, noted above, which were imposed on me to prevent me from raising voting rights issues (i.e., Mississippi's failure to submit, for preclearance, post-November 1, 1964 voting changes which removed the special election provisions from Sections 3312 and 3316 of the Mississippi Code of 1942) from which all of the federal judges who imposed the punishments had personally benefited **prior to their elevation to the federal bench.**

For instance, (1) U.S. District Judge L.T. Senter won a 1968 **special** election pursuant to Section 3312, to fill a newly-created vacancy in the 1st Circuit Court District of Mississippi, without the special election **date** being submitted for preclearance, (2) U.S. District Judge Neal Biggers won a **regular** 1974 election, to fill a newly created vacancy in the 1st Circuit Court District of Mississippi, which was a voting change from the special election manner in which a newly-created vacancy had been filled just six years earlier by Judge Senter in the same 1st Circuit Court District of Mississippi, (3) U.S. District Judge Glen Davidson was Biggers' assistant when Biggers was the

district attorney in the 1st Circuit Court District of Mississippi from 1969-1974, and Davidson received a 1975 appointment (under what remained of Section 3312 following its 1973 unprecleared amendment in Chapter 362, 1973 Mississippi Laws) to fill the district attorney post vacated by Biggers following Biggers' 1974 election to the circuit judge post, (4) after the unprecleared deletion of the special election provisions, for the filling of vacancies in the Chancery, Circuit, and Supreme Court of Mississippi, Mississippi's Governor was unlawfully given the power to fill those judicial vacancies by **appointment**, a process which continues to this day in violation of Section 5, Voting Rights Act, (5) the magistrate judge, who issued the April 1, 1996 banishment order, had earlier received an appointment to fill a vacancy in the 4th Circuit Court District of Mississippi, and (6) when I filled two 1992 and 1994 voting rights lawsuits claiming (a) that the changes in Sections 3312 and 3316 had not been submitted for preclearance and (b) that African-Americans were being deprived of their property right to fill judicial vacancies by voting, Judges Davidson and Biggers were part of a three-judge panel which issued a 1993 decision claiming that Section 3312 had not been used since 1935; later Davidson, Biggers, and Senter concurred in the issuance of the February 27, 1996 sanctions order which barred me from filing lawsuits and which fined me over $50,000. However, by a March 31, 2003 order, the district court refused to consider my claim that the punishments were imposed by federal judges intent on concealing voting rights violations from which they had personally benefited prior to their elevation to the federal bench. On page 15 of the July 24, 200[illegible] banishment memorandum, the district

judge wrote that he would "not resurrect those old cases and examine their merits."

Aside from failing to require the district judge to consider my viewpoint discrimination claim, the 5th Circuit also ignored the fact that strict scrutiny analysis must be employed to determine the merits of the denial of my fundamental right of access to criminal court proceedings. Richmond Newspapers v. Virginia, 448 U.S. 555 (1980). Restriction on a First Amendment right of access to criminal trials and court documents is always violative of strict scrutiny standards unless the government can demonstrate a compelling reason for the restriction.

The reason asserted in the district court's July 24, 2003 banishment order, and passively accepted by the 5th Circuit without examining the statements at issue as required by Bose v. Consumers Union, 466 U.S. 485 (1984), is that I am a "threat to public safety" because my 8-20 year-old **writings** allegedly contained "threats of war against judges by a licensed attorney...." Nothing I have ever written justifies that conclusion, and the district judge failed to cite **one** example where I made "threats of war against judges..." The district judge apparently reached his false conclusion by deliberately mis-characterizing a May 16, 1995 **private** letter I had **written** in which I claimed that "It is my belief that a religious war, using racism as a wedge to separate White Christians from African Christians, is being conducted by non-Christians and the descendants of non-Christians **against** the Christian people in America and in Mississippi." (emphasis added). From that statement concerning racial and religious discrimination, the district judge somehow deduced that I made "threats of war

against judges..."and that I was advocating violence against federal judges. (emphasis added).

The district judge also ignored the May 30, 1997 district court order which disqualified me from practicing law, for the same writings which are at issue in this case, and so I have not been a member of the federal court's bar since May 30, 1997. Since I am not a member of the district court's bar, the district court's July 24, 2003 banishment order, is a classic prior restraint regulation which comes to this Court with a heavy presumption of invalidity. Ward v. Rock Against Racism, 491 U.S. 781 (1989) ("[T]he regulations we have found invalid as prior restraints have 'had this in common: they gave public officials the power to deny use of a forum in advance of actual expression'".)

2. The 5th Circuit committed jurisdictional and double jeopardy errors in concluding (a) that the invalidity of the April 1, 1996 banishment order rendered moot my claim that the February 27, 1996 sanctions order, the May 30, 1997 disbarment order, and the July 24, 2003 banishment order constituted multiple punishment for the same 8-20 year-old writings and (b) that the district court possessed subject matter jurisdiction pursuant to inherent power.

In fact, both the April 1, 1996 banishment order and the July 24, 1996 banishment order are void for lack of subject matter jurisdiction because no case or controversy was

pending at the time that both banishment orders were issued. But the district court and the 5th Circuit claimed that Chambers v. NASCO, 501 U.S. 32 (1991) provided jurisdiction through the inherent power of the district court over an attorney who practiced before the district court.

As noted above, I was disqualified from practicing law in the district court, and from appearing pro se in the district court, by a May 30, 1997 disbarment order. Therefore, Chambers is inapplicable because I have not been a member of the district court's bar for over 7 years.

And, in Peacock v. Thomas, 516 U.S. 349 (1996), this Court held "that a federal court may exercise ancillary jurisdiction '(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees'" but that the "court must have jurisdiction over a case or controversy before it may assert jurisdiction over ancillary claims." This Court made it clear in Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994) that the jurisdiction in Chambers was of an ancillary nature to an independent case or controversy. Thus, there must be an antecedent case or controversy for Chambers to infuse the district courts with ancillary jurisdiction. No case or controversy was pending when the banishment orders were issued.

Even assuming that the district court possessed jurisdiction under Chambers, the July 24, 2003 banishment order was the third punishment, i.e., (1) restrictions on filing lawsuits and a fine in excess of $50,000, (2) disbarment, and (3) banishment, in 7 years for the same writings. The test for determining whether a sanction imposed by a judge, pursuant to inherent powers,

constitutes a civil sanction or criminal punishment, is set out in United Mine Workers of America v. Bagwell, 512 U.S. 821 (1994). A sanction is considered civil if it coerces future obedience and considered a criminal punishment "if it is imposed retrospectively for a 'completed act of disobedience.'" Thus, the banishment order was a third punishment, violated double jeopardy, and was imposed without criminal procedure protections for acts which were complete.

In addition, the May 30, 1997 disbarment order occurred in a case removed from state court on the basis of a federal question and so I am effectively deprived of any federal or state forum in which to raise federal questions. The absence of any forum in which to raise federal questions is a punishment which raises a serious Due Process problem. See Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667 (1986).

3. The 5th Circuit erred in concluding that the district court provided me with adequate notice of the charges against me and in failing to address my void-for-vagueness issue.

The district court, on pages 18-19 of its July 24, 2003 banishment memorandum, indicated that it had provided me with adequate notice of the specific sanctionable portions of my writings at the second show cause hearing on June 12, 2003 by (1) reading "the specific passages at issue Prewitt" and giving "him the opportunity to respond to them, one at a time" and (2) by attaching 81 pages of my

writings to the second show cause notice. Even though the 5th Circuit had previously held that "[p]roviding the [sanctioned party] with an opportunity to mount a defense 'on the spot' does not comport with due process," Inc. v. Philsec Inv. Corp., 939 F.2d 1281, 1292 (5th Cir. 1991), the 5th Circuit held that the district judge's provision of the 81 pages, prior to the **second** show cause hearing, met due process' standards of adequate notice. However, the Third Circuit has interpreted the notice requirement to mean specific notice of the sanctioning authority being considered and the conduct alleged to be sanctionable. See Jones v. Pittsburgh Nat'l Corp., 899 F.2d 1350, 1357 (3d Cir. 1990).

And, this Court has held that "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319 (1976). Clearly, the notice approved by the 5th Circuit, i.e., specific notice of what was at issue belatedly given **on the morning** of the **second** show cause hearing, does not meet the standard of Mathews. The inadequate notice also deprived the courts below of personal jurisdiction.

The failure of the two show cause orders to give adequate notice, i.e, (a) the writings which were sanctionable and (b) the law authorizing punishment of writings, resulted in the July 24, 2003 banishment order being void-for-vagueness (1) because it was issued without a reasonable person being given fair warning of which writings were unlawful, and (2) because it encourages and authorizes arbitrary and discriminatory enforcement. Chicago v. Morales, 527 U. S. 41 (1999). The 5th Circuit held that the vagueness issue was raised for the first time on appeal, and therefore waived. Although the 5th Circuit

apparently would require me to anticipate and raise the vagueness issue **before** the offending order is even issued, it is plain that the vagueness issue was timely raised in the appeal following the July 24, 2003 banishment order. Even assuming that the vagueness issue was not properly preserved on appeal, plain error analysis should have been conducted by the 5th Circuit. See United States v. Olano, 507 U.S. 725, 734 (1993).

4. The 5th Circuit erred in failing to address my claim that the July 24, 2003 banishment order violated the Free Exercise and Establishment Clauses of the First Amendment

The district judge, on page 22 of his July 24, 2003 banishment memorandum, wrote that I was banished from the public areas of the federal courthouse area, i.e., attending criminal trials and reviewing public documents, because of my "anti-Semitic and provocative speech" and because I did not accord the district court the "respect" befitting "the dignity and solemnity of the institution." The district court wrote, on page 22, that I did not "observe common notions of respect for civil order and decency...." Aside from being unconstitutionally vague because of the district judge's unbridled discretion to determine when open-ended words like anti-semitism, provocation, and decency are violated, the foregoing decision violates the (1) standards for criticism of public officials laid down in New York Times v. Sullivan, 376 U.S. 254 (1964) and (2) the Sullivan mandate that "debate on public issues should be

uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." Thus, the courts below erred in failing to apply the New York Times v. Sullivan standard to determine if my disrespectful and anti-semitic words merited a third punishment.

The district court's July 24, 2003 order was directed at pure speech and, even assuming that my writings are anti-semitic, such banishment offends Freedom of Speech rights and rights under the Religion Clauses of the First Amendment; thus, the July 24, 2003 banishment order is unconstitutional. See Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). The First Amendment's Freedom of Speech and Religion Clauses forbid the punishment of anti-semitic, provocative, written speech, See generally R.A.V. v. St. Paul, 505 U.S. 377 (1992), and only speech which constitutes a "true threat' can be regulated. Virginia v. Black, 123 S. Ct. 1536 (2003). Nothing in my 8-20 year-old writings constitute a true threat, and, in fact, only corrupt federal judges who have violated the Voting Rights Act would find my writings so troubling as to be beyond the protection of the First Amendment..

Conclusion

Because the July 24, 2003 banishment order contravenes the protections guaranteed by the First and Fifth Amendments, and the Fifth Circuit's December 17, 2003 decision upheld the July 24, 2003 banishment order, I ask that a Writ of Certiorari issue to review the Fifth Circuit's December 17, 2003 decision.

Appendix

A. December 17, 2003 Fifth Circuit Decision.
B. Fifth Circuit's January 26, 2004 Order Denying Rehearing.
C. July 24, 2003 Banishment Order.
D. July 24, 2003 Memorandum Opinion.
E. February 12, 2003 Show Cause Order
F. April 17, 2003 Show Cause Order
G. May 30, 1997 Disbarment Order.

A.

In the United States Court of Appeals
For the Fifth Circuit

FILED

December 17, 2003

No. 03-60330
c/w No. 03-60704

Charles R. Fulbruge III
Clerk

George Dunbar Prewitt, Jr.,

Appellant.

Before Smith, Demoss, and Stewart, Circuit Judges.

Per Curiam:*

George Dunbar Prewitt, Jr., an attorney at law, appeals the district court's order banning him from the third floor of the federal courthouse in Greenville, Mississippi, absent a showing of good cause. First, he argues that the district court lacked jurisdiction to impose such an order. A court's imposition of sanctions, such as here, stems from its inherent power. See Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991); Crowe v. Smith, 151 F.3d 217, 266 (5th Cir. 1998). The district court was not without jurisdiction.

Second, Prewitt argues that he was never informed of "the specific sanctionable actions at issue" in his show-cause hearing. The district court provided Prewitt with 81 pages of written material relating to his sanctionable conduct. Prewitt has not shown that the notice he received deprived him of a meaningful opportunity to be heard. See City of West Covina v. Perkins, 525 U.S. 234, 240 (1999).

Third, Prewitt argues that Judge Mills, the district court judge who presided over Prewitt's show-cause hearing, was biased against him. Disqualification under 28 U.S.C. 455 is appropriate if a "reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality." Levitt v. University of Texas at El Paso, 847 F.2d 221, 226 (5th Cir. 1988) (citations omitted). Prewitt's speculation that Judge Mills is biased because of a previously dismissed case in which Judge Mills was neither a party nor the adjudicator is conclusional. He has not shown that a reasonable person would harbor doublts about the judge's impartiality. See id.

Fourth, Prewitt argues that he was sanctioned on February 27, 1996, and again on April 1, 1996, for the same conduct. The district court held that the April 1, 1996 sanction order was void for failure to comply with due

process standards. There is no meaningful relief availaable that would redress this alleged wrong. Therefore, this issue is moot. See First Indiana Fed. Sav. Bank v. F. D.I.C., 964 F. 2d 503, 507 (5th Cir. 1992).

Fifth, Prewitt argues that the sanctions order violates his First Amendment rights. The Supreme Court has stated that general principle that "the First Amendment does not guarantee access to property simply because it is owned or controlled by the government." U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns, 453 U.S. 114, 129 (1981). Moreover, the district court found Prewitt to be a threat to public safety, which presents a legitimate cause for limiting his access to the courthouse. See e.g., Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357, 375 (1997) (First Amendment rights may be narrowed for legitimate public safety concerns). Prewitt has not shown that the sanctions amount to a First Amendment violation.

Last, Prewitt argues that the district court failed to comply with the mandate rule, the sanctions order violates his rights under the Establishment and Free Exercise Clauses, and the sanctions order is unconstitutionally vague. We decline to adddress these arguments as they are raised for the first time in this appeal. See Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999). The district court's order is AFFIRMED. All outstanding motions are denied.

AFFIRMED; MOTIONS DENIED.

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*Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

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B.

In the United States Court of Appeals
For the Fifth Circuit

FILED
JAN 26 2004

Nos. 03-60330
Charles R. Fulbruge III
cons/w
03-60704

GEORGE DUNBAR PREWITT, JR

Appellant

Appeals from the United States District Court
for the Northern District of Mississippi, Greenville

ON PETITION FOR REHEARING EN BANC
(Opinion 12/17/03, 5 Cir., _____, _____ F.3d _____)

Before Smith, Demoss, and Stewart, Circuit Judges.

PER CURIAM:

(x) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R. App. P.

5a

and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (Fed. R. App. P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Harold R. DeMoss
United States Circuit Judge

CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF

THE MANDATE.

* Judge Jolly did not participate in the consideration of the rehearing en banc

C.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

RECEIVED
JUL 24 2003
CLERK, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

6a

IN RE:

GEORGE DUNBAR PREWITT No. 4:96MC1-M

FINAL JUDGMENT

In accordance with the memorandum opinion issued today in this cause, the court finds that sanctions against George Dunbar Prewitt are warranted. It is therefore ordered that

1. The April 1, 1996 order of the Magistrate Judge banning George Dunbar Prewitt from the third floor of the federal building in Greenville, Mississippi, is **VOID.**
2. George Dunbar Prewitt is hereby **BANNED** from the third floor of the federal building located at 305 Main Street in Greenville, Mississippi.
3. Should Prewitt wish to file pleadings or other papers with this court, he must do so by U.S. Mail or private courier.
4. Should Prewitt wish to conduct legal research, he must do so somewhere other than the third floor of the federal building in Greenville.
5. For good cause shown Prewitt may attend hearings on the third floor of the federal building in Greenville when is presence is required; however, Prewitt must be escorted by a United States Marshal at all times when on the third floor inside the Greenville courthouse.
6. This opinion and final judgment do not limit or otherwise diminish any other sanctions regarding Prewitt; it merely supplements then.
7. The clerk of the court shall forward a copy of this opinion to the appropriate office of the Mississippi Bar

Association so that the bar may review Prewitt's actions as an attorney in this and other cases.

So **ORDERED**, this the 23rd day of July 2003.

/s/ Michael P. Mills
Michael P. Mills
United States District Judge

D.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

FILED
JUL 24 2003
ARLEN B. COYLE, CLERK

IN RE:

GEORGE DUNBAR PREWITT No. 4:96MC1-M

MEMORANDUM OPINION

This matter comes before the court after an April 1, 2003 hearing for George Dunbar Prewitt ("Prewitt") to show cause why he should not be banned from the third floor of the United States District Court located at 305 Main Street in Greenville, Mississippi-and a hearing on June 12, 2003, for Prewitt to show cause why he should not be banned from all federal courthouses in the Northern District of Mississippi. Prewitt, who is proceeding pro se in this matter, is a member of the Mississippi Bar Association and the bar of this court.

Prior to April 1, 1996 Prewitt frequently appeared on the third floot of the Federal Courthouse in Greenville to file pleadings and use the law library. On April 1, 1996, Magistrate Judge Bogen concluded that Prewitt posed a security risk and rewarded him with an order banning Prewitt from the third floor of the federal building in Greenville. Prewitt had accused the Magistrate Judge by word of mouth of harboring racial animus against him. Prewitt had also directed slanderous and anti-Semitic remarks toward the Magistrate Judge and Fifth Circuit Court of Appeals Judges.

George Dunbar Prewitt's Prior Litigation

George Dunbar Prewitt became a member of the Mississippi Bar Association on December 19, 1988. Soon thereafter Prewitt became fairly active in appearances before judicial officers and their staff members. Prewitt has become adept at punishing those with whom he has a personal conflict by filing and pursuing frivolous lawsuits against them. Prewitt has been sanctioned several times in the Northern District of Mississippi for those practices. A review of some of his juridical sparrings are documented in part by the following incidents.1

In a May 16, 1995 letter from Prewitt to Judge Gray Evans, a state court judge, Prewitt complained that Magistrate Judge bogen (who was then a Mississippi circuit judge) had removed Prewitt from the list of attorneys who serve as public defenders, saying:2

> It is my belief that a religious war, using racism as a wedge to separate White Christians from African-Christians, is being conducted by

> non-Christians and the descendants of non-Christians against the Christian people in America and in Mississippi. [Now United States Magistrate] Judge Bogen and George Kelly are descendants of non-Christians, and they apparently are interested in destroying the lives of as many African Christians as possible, before the non-Christians turn their attention to the White Christians. . . . It is my belief that so venal a hatred (for) Christians by non-Christians is rooted in the 8,000 year old enmity between Western Culture and Asian Culture. ... Thus, all those who attempt to restore and maintain the rights-based theory of jurisprudence, which is the heritage of Africa and Greece, always find themselves confronted, in secret, by the forces of Asian utilitarianism. Asian utilitarians, as a group, simply want to tell everyone else when to go and come, while Western Christians believe that community harmony is best fostered by equality of opportunity for the individual. Asian utilitarians want the goup advantage of attacking Westerners as individuals, and so they hide their unity of purpose and their Asian ancestry.

In a June 13, 1995 "Response to Defendant's Motion for Sanctions, Inter Alia" in a case before the Northern District of Mississippi3, Prewitt argued the following:

> Mississippi Valley Gas Company and Rodney Huggins once again move this court for sanctions against the plaintiff. It is merely a continuation, on the part of certain nouveau riche and big shot Caucasians, of their effort to drive the African plaintiff and his family from an integrated neighborhood in Greenville, Mississippi. ... It is apparent that the big shot, Caucasian controlled

public utilities have used the plaintiff's property as a conduit for their various money-making enterprises, and that to continue their illegal trespasses, the public utilities have decided to drive the African plaintiff off his property and out of Greenville, Mississippi. ...

Judges Eugene Bogen, Gray Evans, and the Washington County Public Defender, however, believed in obtaining pleas of guilty from as many African-Americans as possible, without or without attention to constitutional and statutory rights. After my termination [as a public defender in Washington County], Judge Bogen refused to allow me to represent indigent clients in my private practice of law, and now Judge Bogen's wife, Lanier Sykes Bogen, is attempting to develop homes in and around the very street in which I and my family reside. ...

I have attempted to comply with the orders of this court in every way possible, and it is the Caucasian attorneys in this matter who are permitted to flaunt the rules of discovery by reviewing a deposition without notice to the the deponent and before the review of the deponent, all in violation of the rules surrounding depositions. ...

Since the attorney's clients summoned the police for my moving my sod on my property on January 5, 1994, I suspect that I would have been sentenced to life imprisonment had I obtained a deposition under the same circumstances as did the attorney in this case. ...

These allegations, if permitted to be aired before a Mississippi jury, will also point out the conspiracy of a few, big shot Caucasians against the voting rights of Africans in Mississippi, against the pliantiff, and against any effort of Africans and Caucasians in

Mississippi to live in peace and harmony in integrated neighborhoods.

In a continuation of his unique interpretation of ordinary events, Prewitt stated, in a filing before the Mississippi Supreme Court, "It appears to be no small conincidence that the Bogen Real Estate Firm, headed by Judge Bogen's wife, was arrogant and cruel enough to even leave a business card at my door during this same period. This may have been Bogen's way of telling me to get out of the neighborhood." ("Petition for Order of Mandamus to Eugene Bogen, Circuit Judge," submitted to the Mississippi Supreme Court in May of 1995). In this same petition, Prewitt continued:

> In my opinion, Judge Bogen refuses to appoint any attorney, to represent criminal indigents, who seeks to prepare a constitutional and statutory rights-based defense. Instead, Judge Bogen tries to implement the ideal society through implementation of his innate utilitarianistic views, i.e., plead as many African Christians guilty as is possible, so that people from a non-Christian, non-African, Asian background can teach the rest of us common Christian folk how to structure our lives.
>
> In this state, we have a long history of commitment to a rights-based jurisprudence, starting with the Christian Europeans who wrote the 1832 Mississippi Constitution in which even slaves were given the right to grand jury inquiries in capital cases. Those 1832 Mississippi Christians even took steps to abolish slavery.
>
> However, we know that the foreign and domestic utilitarians, in order to maintain slavery, somehow

> managed to start the Civil War in an effort to destroy the United States rather than follow the lead of the 1832 Christians in Mississippi. The utilitarians must not be allowed to drive wedges between European and African Christians as they have done for the past 135 years.
>
> The courts of Mississippi must employ a rights-based jurisprudence while leaving it to the legislature to resolve the competing interests of utilitarianism. I may not be the best attorney in Mississippi, but I should be given the chance to at least place my name alongside those attorneys who wish to represent criminal indigents without being denied that chance by a Judge who is often reversed by this Court because of his odd legal concepts, i.e., removing an African lady from a deliberating jury because she refused to go along with what Judge Bogen and the other jurors wanted.

On June 26, 1995, Prewitt filed a "Motion for En Banc Reconsideration" with the Mississippi Supreme Court, making the following unfounded remarks:

> The only explanation for Judge Bogen's inconsistent actions is either judicial incompetence, or a virulent utilitarianism against Africans, who are represented by African attorneys who seek to vindicate the rights of the poor Africans. There may also be a more malevolent motive for Judge Bogen's actions.
>
> Judge Bogen is a descendant of Jews, and descendants of Africans and Jews have not been on the best of terms in recent years. In addition, Jews are descended from the Far East Asian racial group that includes the Japanese and Koreans, who also use the term Chosen People as descriptive of the Koreans. The late Moshe

> Dayan, a top military leader in Israel, and a Japanese Government official, both described Africans as being the problem with America.
> As loathesome as this possibility may be, this type of Asian racism, practiced by Asian Jews and Japanese against Africans, may also explain the apparent enmity of Judge bgen against poor Africans who attempt to vindicate their constitutional rights. ... As noted earlier, utilitarianism is not the constitutional province of the courts, and as much as Judge bogen may believe that he is helping society by putting away undesirables in prison, Judge Bogen must forego the utilitarian principles of some other society for the egalitarian principles of equality, which egalitarian principles are the constitutional domain of the courts in Mississippi. In Mississippi, and in America, the requirement that all people be accorded equality before the law has its origin in the principles of Christianity, and not in a society which practices utilitarianism. (June 16, 1995 order denying en banc reconsideration of petition for a writ of mandamus, Mississippi Supreme Court Cause No. 95-00565).

In an appeal to the Fifth Circuit, Prewitt filed a "Motion for En Banc Review of the November 24, 1995 order, Motion for Clarification of the November 24, 1995 Order, and Motion for Recusal of All Judges who trace their Blood Lineage back to the Man called Jacob or Israel in the Bible." It states, in pertinent part:

> I now make it plain that all members of this court who race their genealogical blood line back to the man called Jacob or Israel in the Bible should recuse

themselves from this case. ... For the reasons expressed below, that ancestry is an issue in the underlying case, and the judges of this court must take such ancestry into account to determine if they should recuse themselves from this case. ... Christians of African descent believe in the "rights of equality" of all people as the born-again tenet of their faith, while Asian Jews, who rely on genealogical blood lines to establish a person's position in the world community, believe in a "utilitarian" system where pre-ordination, based upon consanguinity, places the family members of those descended from Jacob at the helm of government, to the total exclusion of those who believe in a merit system based upon equality of opportunity. ... [United States District Court Judges] Biggers and Davidson are corrupt to the core, but their actions cannot serve to equitably preclear the 1973 voting changes in 3312, for the law is clear that unprecleared voting changes are invalid laws until precleared. ... Thus, it is plain that Biggers took criminal actions to cover up his personal benefit from the failure to preclear 3312's 1973 voting changes.... In summation, this case deals expressly with the extortion of African-American voting rights by Asian Jews who trace their lineage back to the man called Jacob in the Bible, and the illegal de facto transfer of power from elected officials, in the predominantly African-American Greenville, Washington County, Mississippi area, to a group of predominantly non-African attorneys and Judges of Asian-Jewish descent who trace their blood lineage back to Jacob in the Bible. In addition, two Mississippi federal judges from the Northern District of Mississippi [Judges Biggers and Davidson,] who trace their lineage

> back to Jacob in the Bible[,] have covered up Voting Rights violations by the State of Mississippi and one of those judges altered the transcript of an October 18, 1994 hearing to cover up the fact that the two federal judges had written a decision in which the appellant appeared, and in which they fraudulently concealed up (sic) their benefit from the Voting Rights Act violations. (Fifth Circuit Cause No. 95-60519).

In Prewitt v. Alexander, et al., 4:94CV94-B-O (N.D. Miss.), Prewitt submitted a pro se document entitled "Proposed Addendum to Pretrial Order," which was, in reality, Prewitt's announcement that he would not longer communicate with United States District Judge Neil Biggers, who presided over the case. It was also another opportunity for Prewitt to argue that he was the victim of an ancient and ever-expanding conspiracy by "Asian Jews."4

> The plaintiff believes that the U.S. District Judge Neall Biggers has committed criminal acts, in altering, or causing to be altered, the official transcript of an October 18, 1994 hearing in this matter. ... [S]ince the plaintiff will no longer submit any further motions or other pleadings or any type of objection to Judge Biggers, the plaintiff will make his arguments of fact and law to the jury, with full use of proffers when Judge Biggers bars certain evidence of the plaintiff. It should be clear that the plaintiff intends no further communication of any sort with Judge Biggers, and will only address the jury if and when one is seated and sworn. ... The plaintiff contends the following summation of the facts that will be presented to the jury:

> (a) That a utilitarian conspiracy exists, by some Asians and some descendants of Jews, to imprison and otherwise deprive Americans of African origin of their right to vote, the right to live in an integrated neighborhood, and the right to proportionate share of properly drawn voting districts, in order that some Asians and some descendants of Jews might maintain a despotic, disproportionate control of the levers of governmental power in Greenville and the Delta Area.
> (b) That the object of this ruthless and garroting conspiracy is the political and economic strangulation of the two governmental pillars, the judiciary and the right to vote, which vindicate all other constitutional and statutory rights of Americans of African origin in particular. ...
> (d) That defendants Kelly and Bogen are both descendants of Jews and that both took actions ... which strike at the heart of our system of checks and balances in Mississippi government. ...
> (j) As [a] plaintiff's aside, the plaintiff would note Jenny Virden even used the term "unintelligible"... to describe the foregoing allegations. It is just appalling how bubble-brain airheads, like Jenny Virden and Jere Hafter, can get away with using non-words like "unintelligible" as the description of the work product of Africans.

In response to Prewitt's actions, Judge Biggers found that Prewitt uses frivolous lawsuits to harass those with whom he clashes:

> At least one of the defendant in this action has alleged that [Prewitt] uses his position as a member of the bar

to harass people with whom he has had personal disagreements in the past by filing frivolous lawsuits against them. There is evidence to support such an assertion. Filing suit against someone for the sole purpose of harassment is reprehensible, and [Prewitt] has been warned several times in the past, by both this court and the Fifth Circuit Court of Appeals, that frivolous lawsuits will not be tolerated.

Not only does the plaintiff have a habit of filing vexatious litigation, but he also has a history of making outrageous, scandalous, and unfounded accusations against members of the judiciary. He has charged ever judge in the Northern District of Mississippi and at least one in the Southern District with being racially biased, even going so far as to accuse one judge of participating in the lynching of a black youth. He has further accused all three judges of fraud corruption and lying. He has asked that his most recent case be heard by judges from outside the Fifth Circuit. None of [Prewitt's] accusations against the judiciary have had enough merit to survive the initial stage of judicial scrutiny. Prewitt does not limit his castigation of the judiciary fo the judges of the Northern District of Mississippi. In a brief filed in one of [Prewitt's] voting rights cases, Prewitt states: [I]t is clear that the history of racial lynchings and discrimination could not have occurred without the instigation and connivance of the Mississippi judiciary. It is time that the judiciary of Mississippi is accountable to the people for its misdeeds. To those familiar with Prewitt, statements such as these are not uncommon.

Prewitt v. Alexander, et al., 4:94CV94-B-O (memorandum opinion of February 22, 1996 finding sanctions appropriate5).

When this court asked Prewitt at the June 12, 2003 show-cause hearing whether he had accused any judges of this court of participating in a lynching, Prewitt acknowledged that he had heard a rumor that one federal judge had attended the lynching of a black youth known as "John the Baptist"-and had asked the judge on the record if the rumor was true. This is the type of outrageous, disrespectful, and scandalous conduct that members of the bar and judiciary have come to expect from George Dunbar Prewitt.

Procedural Posture

On June 25, 2002, more than six years after entry of the Magistrate Judge's imposition of sanctions, Prewitt moved the court to reconsider the 1996 order under Fed. R. Civ. P. 60(b). He alleged that the Magistrate Judge had issued the order: (1) without subject matter jurisdiction, (2) without providing Prewitt notice and a meaningful opportunity to be heard in the matter, and (3) without regard for the Magistrate Judge's own involvement in the case. Prewitt insists that the Magistrate Judge should have recused himself. For these reasons, Prewitt argued that the 1996 judgment was void. Only July 8, 2002, this court denied Prewitt's June 25, 2002 motion for reconsideration as untimely. Prewitt subsequently peppered this court with motions on July 11, July 12, and July 29, 2002. Prewitt reiterated his previous arguments and set forth two additional arguments: (4) that void judgments may be

attacked under Fed. R. Civ. P. 60(b)(4) at any time, and (5) the judgment is void because it was not accompanied by a separate document in accordance with Fed. R. Civ. P. 58. This court denied these motions on August 6, 2002, and Prewitt appealed the court's July 8, 2002 denial of reconsideration. The Fifth Circuit found that motions under Fed. R. Civ. P. 60(b)(4) are not subject to a time limitation. It vacated the denial and remanded the case, ordering this court to hold a show-cause hearing regarding why Prewitt should not be banned from the third floor of the Greenville Federal Building.

A show-cause hearing was held on April 1, 2003, in the Greenville Federal Building before District Court Judge Michael P. Mills. Thereafter, this court determined that a second hearing was necessary to determine the question of court security and slso to protect Prewitt's constitutional rights. The second hearing, requiring Prewitt to show cause why he should not be banned from all three of the federal courthouses in the Northern District of Mississippi, was held on June 12, 2003.

The 1996 Sanctions Order is Void

Prior to ruling on the merits of this case, the court must discuss the validity of the April 1, 1996 judgment. After due consideration, the court finds that the judgment in question was, in fact, void. Under Fed. R. Civ. P. 60(b)(4), a judgment is void if the court lacks personal or subject matter jurisdiction or denies any party due process. Williams v. New Orleans Public Service, Inc., 728 F.2d 730 (5th Cir. 1984). Inarguably, the Magistrate Judge had jurisdiction over the subject matter for two reasons: (1)

Prewitt is a member of the court's bar association and the Magistrate Judge has the power to monitor and censure the conduct of attorneys authorized to practice before the court and (2) The court has the power to ensure the safety and security of its judicial officers and staff. The sanction at issue was based on Prewitt's behavior at the courthouse and the Magistrate Judge's finding that Prewitt's presence posed a security risk.

The Magistrate Judge had subject matter jurisdiction. The Magistrate Judge did not, however, establish personal jurisdiction over Prewitt. The accused was never served any type of process in the matter and was never given a chance to defend the allegations lodged against him prior to entry of final judgment. This clear lack of notice and opportunity to be heard renders the judgment void for failure to comport with the minimum standards required for due process. Id. From a traditino beginning with King John at Runneymede down to and including the Honorable George Dunbar Prewitt of Greenville, Mississippi, our American notices of simle fairness, not to mention constitutional mandates of due process, dictate that every man is entitled to due process of law-even a man with poor judgment, a vexatious tongue and a venomous quill. For these reasons, the court finds the April 1, 1996 judgment void.6

The April 1, 2003 Show-cause Hearing

As previously stated, the Magistrate Judge, after finding that Prewitt had made frivolous filings and that his presence on the third floor of the Grenville federal building posed an unnecessary security risk, entered on order on April 1, 1996, banning Prewitt from the third floor of the federal

building in Greenville. On April 1, 2003, the court held a hearing to provide Prewitt the required notice and opportunity to respond to the findings in the 1996 sanctions order. In anticipation of that hearing, the court entered an order on March 3, 2003, vacating the April 1, 1996 order which barred Prewitt from the third floor of the U.S. Courthouse and Federal Building in Greenville, Mississippi, permitting him to attend the show-cause hearing and to subpoena witnesses for the hearing. Prewitt chose not to subpoena witnesses.

Prewitt testified at the April hearing that he did not know why the Magistrate Judge found his presence at the courthouse to be a security risk. He also stated that the notice of the April hearing was inadequate to inform him of what conduct the court found objectionable, thus again depriving him of the opportunity to provide a meaningful response. Not to be goaded into anarchy, this court nonetheless invited Prewitt numerous times to respond to the 1996 findings and to explain the context of his provocative remarks, actions, and submissions to the court. He repeatedly declined, professing unfamiliarity with any oif the allegations suggested by the court. He did, however, concede that he had requested the recusal of all Fifth Circuit judges in cause number 95-60519 "who trace their blood lineage to the man called Jacob or Israel in the Bible [because] that ancestry is an issue in the underlying case."

The June 12, 2003, show-cause Hearing

At the April 1, 2003, show-cause hearing, Prewitt complained that the notice of hearing did not specify the conduct for which he faced sanctions. After taking the matter under consideration and out of an abundance of

caution, this court set a second show-cause hearing for June 12, 2003. Along with notice of that hearing, the court attached various documents detailing Prewitt's questionable actions and behavior in this court, in state court and in the Fifth Circuit. With respect to those attached documents, Prewitt was to show cause why he should not be banned from entering any of the courthouses in the Northern District of Mississippi. Prewitt was again permitted to subpoena witnesses. Again, Prewitt called only himself as a witness.

Prior to addressing the documents at issue, Prewitt made several general arguments before the court. He first argued that his actions and anti-Semitic statements are protected speech under the First Amendment and, therefore, beyond the power of the court to censure. He again argued that his due process rights were violated because the documents attached to the order setting the second show-cause hearing were insufficient to notify him of the behavior for wihch he might be sanctioned. Finally, he argued that the court could not sanction him for his actions at those actions had occurred so long ago that they should be subject to some statute of limitations.7

As discussed above, the 1996 sanctions order is void for several important procedural reasons. The court has, by virtue of the two show-cause hearings, corrected those procedural defects and now turns to the merits of this case. The question now before the court is whether Prewitt should be banned from entering any of the federal courthouses in the Northern District of Mississippi in light of the documents attached to the order setting the instant hearing.

Prewitt's Sanctionable Conduct

Though the documents in question are in the record, quotes from them were included above for clarity. Prewitt's own writings and previous filings in the Northern District Court establish that Prewitt has long engaged in a pattern of conduct in which he exacts revenge against those who differ with him by filing and relentlessly prosecuting frivolous lawsuits against those perceived antagonists in federal and state court. The Northern District Court has frequently sanctioned Mr. Prewitt. He has been rebuked by a large monetary sanction. He has even been prohibited from filing lawsuits in this court without court permission. These orders have failed to diminish Prewitt's enthusiasm for judicial confrontation. Once a presiding judge makes a ruling against Prewitt ikn these matters, Prewitt then shifts his focus to that judge, castigating the judge in pleadings filled with totally unfounded slanderous and scandalous accusations.

Prewitt's Arguments at the Hearings8

Although Prewitt was loath to discuss the facts surrounding the 1996 sanctions order at either hearing, he readily presented his legal arguments to the court. First, he argued that he had already been sanctioned in another case before this court for the same behavior in the cases cited by the Magistrate Judge. Thus, Prewitt argued, he should not be sanctioned a second time for the same infractions. This argument is without merit. The court finds that Prewitt was not sanctioned twice for the same conduct. It has instead examined Prewitt's past conduct and found reason to ban him from the courthouse.

Second, Prewitt argued that the Magistrate Judge did not have jurisdiction to impose sanctions. The issue of jurisdiciton is discussed above in this opinion and will not be repeated here.

Third, Prewitt claimed that the prohibition against his entering the federal courthouses in the Northern District of Mississippi constitutes an illegal seizure in violation of the Fourth Amendment. This argument is erroneous. The authority Prewitt relies on for this proposition discusses the acts of police officers in confining suspected criminals to a small area from which they are not free to leave in the context of the investigation of a crime. United Stastes v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870 (1980). This case involves the proposed order of a court prohibiting an attorney from entering the three federal courthouses in the Northern District of Mississippi in the context of a civil penalth for misbehavior at the courthouse. Unquestionabley, Prewitt has neither been "seized" under any reasonable interpretation of that word, nor has he been confined to a small area from which he cannot leave for the purpose of interrogation. Within the bounds of the law, he is free to go wheever he chooses in the whole wide world-**except** for the federal courthouse in Greenville. Prewitt has taken this argument out of its appropriate criminal law context and it, too, is without merit.

Prewitt's fourth argument was that the sanction imposed violated the court's Local Rule 83.1(C)(1), which requires thirty-day notice and a hearing prior to imposing sanctions. This argument is now moot, as the court has found the 1996 imposition of sanctions void and has provided new notice and a hearing on the matter of sanctions.

Fifth, Prewitt argued that the judges in three of the eleven cases cited in the 1996 order based their decisions

upon bias against him rather than on the facts and law pertaining to the cases in question. Prewitt claims that three of the eleven cases deemed by the Magistrate Judge as frivolous in fact had merit and thus would not support the 1996 sanction order. This court has already ruled that it will not resurrect these old cases and examine their merits. Even assuming the three cases Prewitt mentioned at the hearing did have merit, Prewitt has not challenged the fact that the remaining eight cases were frivolous. One frivolous case coupled with the other factors discussed in this order would support the sanction imposed.

Prewitt's sixth claim is that the santion imposed is a type of "criminal contempt" punishment, warranting all of the due process requirements of a criminal trial. The Supreme Court's analysis of criminal and civil sanctions, quoted below, is succinct and informative on this issue.

> Criminal contempt is a crime in the ordinary sense, and criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings. For serious criminal contempts involving imprisonment of more than six months, these protections include the right to jury trial. In contrast, civil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is required. [FN2]. We address only those procedures required for adjudication of indirect contempts, i.e., those occurring out of court.9 Direct contempts that occur in the court's

> presence may be immediately adjudged and sanctioned summarily, and, except for serious criminal contempts in which a jury trial is required, the traditional distinction between civil and criminal proceedings does not pertain. International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 826-27, 114 S.Ct. 2552 (1994) (citations omitted).

The sanction imposed on Prewitt was not a penalty for civil or criminal contempt since Prewitt was not in violation of a specific court order. Instead, he repeatedly violated the rules and decorum of this court which members of the bar of this court, and even untrained pro se litigants, are expected to honor. Further, if the court were to find that the sanction imposed was for contempt, it would clearly have been civil contempt, as the sanction entailed only a small restriction and no monetary penalty or jail time. The case Prewitt cites in support of his criminal penalty theory involves a judge imposing a find of $52 million constitutes a criminal penalty, it is just as clear that restriction from entering the premises of the Northern District federal courthouses is not.

Seventh, Prewitt argued that imposing any type of sanction under the facts of this case would violate his First Amendment right to freedom of speech by punishing him for his beliefs. He argued that the sanction iimposed violated his First Amendment rights of free speech and association. This seventh argument fails, as well. Prewitt has failed to distinguish between his right as a citizen to speak in a public place dedicated as a forum for speech and his privilege as an attorney or pro se litigant to present arguments before a court of law. Under the doctrine of unconstitutional conditions, the government may not

require a person to give up a constitutional right (in this case, the right to enter onto public property) in exchange for a discretionary benefit (in this case, the ability to practice law before the court or to advocate one's position in court). Such has not occurred here. Dolan v. Tigard, 512 U.S. 374, 114 S.Ct. 2309 (1994). Government property which is not, by tradition or designation, a forum for public communication is governed by different standards than those governing property where citizens traditionally air their views. Perry Education Ass'n v. Perry Local Educator's Ass'n, 460 U.S. 37, 103 S.Ct. 948 (1983). The First Amendment does not guarantee public access to property owned or controlled by the government. United States Postal Service v. Greenburgh Civic Ass'n, 453 U.S. 114, 101 S.Ct. 2676 (1981). The government may reserve a forum for its intended purposes, communicative or otherwise, as long as the reservation is reasonable and not an effort to suppress the content of speech. Id at 2686, n. 7. The government, like an owner of private property, has the power to reserve its property for the use to which it is lawfully dedicated. Id. In this case, the courthouses in this district are dedicated to the purpose of administering federal cases in an orderly and expeditious manner. The court's decision to ban Prewitt from the courthouse is reasonable in light of the fact that Prewitt has become a nuisance and a potential threat to the judicial officers there-not because of the content of his speech. The court is not punishing Prewitt for the content of his speech. However, Prewitt's inflammatory and threatening speech towards judicial officers of this court coupled with his unnecessary presence in the courthouse render him a legitimate security threat.

In his eighth and final argument, Prewitt alleged that the order setting the second show-cause hearing failed to provide him with adequate notice of the specific conduct for which he faces sanction. The order in question directed Prewitt to "appear before the court at 10:00 a.m., Thursday, June 12, 2003, in the Federal Building at 911 Jackson Avenue in Oxford, Mississippi to show cause why he should not be prohibited from entering any of the courthouses of the United States District Court for the Northern District of Mississippi in light of the documents attached to this order." (emphasis added). The court attached nine documents, totaling eighty-one pages, to the order. The entire contents of each document were included to enture that none of Prewitt's remarks or the findings of various courts were taken out of context.

Prewitt argues that so many documents were attached to the order that he could not reasonably be expected to know which parts the court might find objectionable. Such an argument is disingenuous. One of a childlike mind might refer to such a defense as "wiggle-worming." Wiggle-worming constitutes a poor excuse, not a defense. This court has provided Prewitt with but a small sample of the disrespectful, anti-Semitic and threatening diatribe that he has submitted to this and other courts over the years. Eighty-one pages certainly was not too large a sample for Prewitt to digest in the nearly two months between the time the hearing was set and the time it took place. If Prewitt truly had a a question regarding which parts of the documents gave the court pause, he could have asked for clarification of the order within a reasonable time prior to the hearing. Instead, Prewitt waited until June 9, 2003, less than three days before the hearing, to submit a motion seeking, among other forms of relief, to cancel the hearing.

He claimed the notice was constitutionally inadequate. Clearly, Prewitt sought not to clarify the court's objective at the hearing, but to avoid the hearing altogether. At the second hearing, the court read the specific passages at issue ot Prewitt and gave him the opportunity to respond to them, one at a time. The court finds the notice, given under these circumstances, was more than adequate. In sum, all of Prewitt's arguments regarding the court's ability to sanction his conduct are without merit.

The Law Governing Sanctions

The court's power to impose sanctions in this unusual circumstance flows not from statute or rule, but from its inherent power, which emanates from the "control necessary vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." Chambers v. NASCO, Inc., 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (quoting Link v. Wabash R.R. Co., 370 U.S. 626, 630-631, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)).10 The court possesses the discretion to tailor sanctions to the particular facts of this case. Fed. R. Civ. P. 11, Advisory Committee Notes. The particular form and amount of an inherent power sanction is "uniquely committed to the sound discretion of the imposing court." Crowe v. Smith, 151 F.3d 217 (5th Cir. 1998). The court's inherent power to impose sanctions must be used with restraint and cautioun; because of its potency and the limited control of its exercise, the pwer may be exercised only if essential to preserve the authority of the court, and the sanction chosen must employ the least possible power adequate to the end proposed. Chambers v. NASCO, Inc., 501 U.S. 32, 111 S.Ct. 2123, 115 l.Ed.2d 27 (1991);

Anderson v. Dunn, 19 U.S. (6 Wheat) 204, 231, 5 L.Ed. 242 (1821), quoted in Spallone v. United States, 493 U.S. 265, 280, 110 S.Ct. 625, 635, 107 L.Ed.2d 644 (1990). A court may iimpose sanctions on a nonparty. General Ins. Co. of America v. Eastern Consolidated Utilities, Inc., 126 F.3d 215 (3d Cir. 1997). The court, however, must include the nonparty in a show-cause order to establish personal jurisdiction over him for sanctions. McGuire v. Sigma Coatings, Inc., 48 F.3d 902, 907 (5th Cir. 1995). As long as a party receives an appropriate hearing, he may be sanctioned for conduct occurring beyond the courtroom. Chambers v. NASCO, Inc., 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991). The court should choose the least severe sanction adequate to deter sanctionable conduct in the future. Thomas v. Capital Security Services, Inc., 836 F.2d 866 (5th Cir. 1988).

Discussion of Sanctions

With these governing principles in mind, the court now examines Prewitt's conduct to determine what sanction, if any, should be imposed. The court repeatedly asked Prewitt to explain his actions, anti-Semitic remarks and statements against an on-going "religious war" in which Prewitt clearly pits himself against various judicial officers of this court. Indeed, when asked about the anti-Semitic remarks at the first hearing, Prewitt told the court that he could only remember ever mentioning that the Magistrate Judge was Jewish on one occasion and that he certainly did not remember having made anti-Semitic statements. The court's examination of the documents Prewitt submitted to this and other courts over time shows that this statement was, at best, insincere, and at worst an outright lie to this

court. Even a cursory examination of the documents Prewitt has submitted to various courts over the years supports the Magistrate Judge's 1996 findings that Prewitt had made anti-Semitic statements and, more importantly, that Prewitt is, indeed, a security risk. 11 The quotations above from Prewitt's prior submissions to this and other courts are merely an example of the reams of distrible Prewitt has submitted to the unsuspecting logical world.

When the court asked Prewitt whether he had accussed a judge of the Northern District of participating in a lynching, Prewitt acknowledged that he had heard a rumor that a judge of this court had attended the lynching of a black youth known as "John the Baptist"-and had asked the judge on the record if the rumor was true. This is the type of outrageous, disrespectful, and scandalous conduct that members of the bar and judiciary have come to expect from Prewitt. By his own words, Prewitt clearly believes that he is engaged in a religious war and that Maigstrate Judge Bogen and United States District Judges Biggers, Davidson, and Senter are his foes.12 The court cannot take threats of wat against judges byu a licensed attorney lightly. The word "war" suggests violence. This court has a duty to the employees, litigants, atttorneys, and other rightful users of the Federal Courts in the Northern District of Mississippi to ensure their safety and to maintain appropriate decorum. This judge takes personal notice that Mr. Prewitt is an affable, likable, charming individual who proudly advised the court of his prior military service on behalf of his country. These facts being acknowledged, it is clear that Mr. Prewitt's personal political and and racial views have so colored his thinking, to, in effect, create within his mind a martyr's complex sufficient to give this judge sufficient concern to believe that the rights of public safety outweigh

Mr. Prewitt's rights to appear in the Greenville Courthouse. For the reasons the court finds Prewitt's presence on the third floor of the Greenville courthouse indeed poses a security risk.

Prewitt twice argued that the court may not sanction him for his submissions to the court or his actions because such anti-Semitic and provocative speech is protected under the First Amendment to the Constitution. This argument is without merit, as Prewitt has failed to distinguish between speech made on an open street by an ordinary citizen and that made in the courthouse by an attorney of the bar of this court. As discussed above, an ordinary citizen may air, with little restraint, controversial views in public. Konigsberg v. State Bar of California, 366 U.S. 36, 60-61, 81 S.Ct. 997, 6 L.Ed.2d 105 (1961). On the other hand, courts have the inherent power to "manage their own affairs so as to achieve the orderly and expeditious disposition of cases." Chambers v. NASCO, Inc., 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (quoting Link v. Wabash R.R. Co.,. 370 U.S. 626, 630-631, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)), The court may use that power to insist that attorneys who practice before it do so with respect, upholding the dignity and solemnity of the institution. Thus, while citizens have the right to express their views on inflammatory and controversial topics, attorneys must do so wisely in court. Those who fail to observe common notions of respect for civil order and decency should not complain when their actions finally draw federal attention and reproval. Such barristers must face the consequences when the court exercises its inherent power to maintain order, discipline and integrity in its environs. The court now exercises that power.

Sanction Imposed

Prewitt's admission of his use of virulent and abusive language and his unwillingness to discuss the facts of this case who poor judgment and a lack of candor with the court. Prewitt has filed numerous frivolous and malicious actions in this and other courts, had made a nuisance of himslef in the Greenville courthouse itself and has set forth in writing his belief that he is carrying on a holy war against several judicial officers of this court. As a sanction for these actions the court hereby bars Prewitt from entering the third floor of the federal courthouse in Greenville, Mississippi.13 As Prewitt acknowledged at the first show-cause hearing that he did not have any litigation pending in state or federal court, he has no need to enter the third floor of the federal building. The fact that Prewitt poses a security risk favors a complete and permanent ban from the courthouse. However, the fact that Prewitt is an attorney woluld seem to require some relaxation of that requirement because he may, at sone poiunt, be required to attend a trial or hearing in federal court. Should Prewitt wish to file pleadings or other papers with this court, he must do so by U.S. Mail or private courier. Should Prewitt wish to conduct legal research, he must do so in some other location. The court may, however, for good cause shown, permit Prewitt to attend hearings for which is presence is required in one of the courthouses in this district. 14 Should Prewitt's presence at the courthouse be so required, a United States Marshal must escort him to and from the hearing and accompany him at all times when he is in the courthouse. This opinion shall not be construed to limit or otherwise diminish any other sanctions measures regarding Prewitt. It shall merely supplement them. In particular the

court notes that the February 22, 1996 order in Prewitt v. Alexander, et al., 4:94CV94-B-O, requiring Prewitt to obtain leve from this court prior to filing any new cases, shall remain in effect.15 Finally, this court is mindful of the duty an attorney owes his client and cannot ignore its responsibility to insure the fairest and best counsel for litigants seeking attorneys to practice before this court. George Dunbar Prewitt's actions in this case and in previous cases merit review by the Mississippi Bar Association. While this Court cannot predict the outcome of such a review, it is clear that the bar should be aware of Prewitt's exploits ove the years in the courts of Mississippi. For this reason, the clerk shall forward a copy of this opinion to the Mississippi Bar Association for a review of Prewitt's course of conduct. A final judgment consistent with this memorandum shall issue this day.

SO ORDERED, this the 23rd day of July 2003.

/s/ Michael P. Mills
UNITED STATES DISTRICT JUDGE

Footnotes.

1. There is no particular order to these quotes-just the common theme of George Dunbar Prewitt's persistence in prosecuting meritless cases and generating scattered diatribes against those with whom he perceives a dispute.
2. In all the quotes that follow, Prewitt's recitation of the names of the judges of this court have seen set in bold and italics.
3. Prewitt v. Moore, et al., 4:04CV10-B-O.
4. As discussed above, the conspiracy expands to include each and every judge who rules against Prewitt.
5. Interestingly, the only one of the numerous defendants in that action not to seek sanctions against Prewitt was Judge

Bogen, the recipient of the bulk of Prewitt's ire and antagonism.

6. As the court finds that the 1996 final judgment is void, the court need not address Prewitt's other scattered arguments regarding that issue.

7. Prewitt did not, however, specify whnich statute of limitations might apply, and this court has found none.

8. Due to the nature of the hearings, Prewitt's meandering style of presentation and the fact that Prewitt argued some ofthe same points in both hearings, the court will discuss Prewitt's arguments from both hearings in the same section.

9. In all likelihood the Magistrate Judge acted in accordance with the language in footnote 2 when he summarily imposed sanctions upon Prewitt. It seems that this language would encompass infractions of rules as well as specific court orders.

10. The principles governing the law of sanctions differ only slightly among the various sources of sanctioning power. Thus, the authority cited in this memorandum opinion is based upon sanctions imposed in different circumstances such as the discovery rules, Rule 11, 1927, and the court's inherent power. Unless otherwise stated, the rules set forth within apply to all types of sanctions.

11. To illustrate this point, one need only read the numerous examples now included in the record of Prewitt's disturbing and anti-Semitic submissions, as well as other court documents describing Prewitt's tendency to file frivolous suits to harass and frustrate those against whom he has a personal grudge.

12. Apparently, Prewitt has now placed this judge on the list of foes in his ongoing religious war and believes he is the victim of religious persecution. In relevant part, Prewitt stated in his June 9, 2003, motion: "And that Judge Mills,

and every other ant-Christian may understand me completely, I want to make it plain that I believe wholeheartedly in Jesus Christ as God of the Universe, that faith in Jesus Christ has sustained Christians in the worst of times, and that if I have to suffer for my Christian beliefs and writings, that is a small price to pay if my reward is to someday be in the eternal company of Jesus Christ and the Saints who hahve given their lives as courageous followers of Jesus Christ and His Testimony. I am 55 years of age, my race is almost run, my sojourn in this world diminishes with each passing day. I therefore greet this religious persecution of me with joy, for Jesus Christ taught us, in the Sermon on the Mount as related in Matthew 5:12, to "Rejoice, and be exceeding glad: for great is your reward in heaven; for so persecuted they the prophets which were before you." (emphasis added).

13. Other courts have imposed such a sanction in similar situations. Sassower v. Abrams, 833 F. Supp. 253, 267 (S.D.N.Y. 1993) (litigant prohibited from entering the courthouse because of numerous frivolous filings in the past). The current case differs from Sassower in two key respects: (1) Sassower's presence in the courthouse did not pose a security risk, and (2) Sassower was not an attorney.

14. The April 1, 2003, show-cause hearing is an example of this exception. Prewitt moved for permission to attend the hearing despite the 1996 order prohibiting his entry into the court, and the court granted that motion.

15. The February 22, 1996, opinion and order, which are attached to this opinion, set forth the actions Prewitt must take to obtain leave to file a new case in this court.

E.

37a

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

In re: George Dunbar Prewitt No. 4:96MC01-M-B

ORDER TO SHOW CAUSE
AND NOTICE OF HEARING

Came before the court this date the PER CURIAM Opinion of the United States Court of Appeals for the 5th Circuit directing this Court to order a Show Cause Hearing in this matter and the Court being anxious to comply with the order of the 5th Circuit does hereby set this matter down for hearing on the 1st day of April, 2003 at 9:00 a.m. in the United States District Court for the Northern District of Mississippi at Greenville, Mississippi, at which time George Dunbar Prewitt, Jr., is hereby ordered to show cause why he should not be banned from the third floor of the United States District Courthouse in Greenville, Mississippi, in the future.

THEREFORE, it is hereby **ORDERED** that a hearing is set for April 1, 2003, for Defendant Prewitt to show cause why he should not be banned from the third floor of the United States District Courthouse in Greenville, Mississippi.

SO ORDERED, this the 12th day of February 2003.

/s/ Michael P. Mills
United States District Judge
Michael P. Mills

38a

E.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

Filed
Apr 17 2003
Arlen B. Coyle, Clerk

In re: George Dunbar Prewitt No. 4:96MC1-M

ORDER SETTING SECOND SHOW CAUSE HEARING

This matter comes before the court after an April 1, 2003, hearing for George Dunbar Prewitt ("Prewitt") to show cause why he should not be banned from the third floor of the Federal Building at 305 Main Street in Greenville, Mississippi. After due consideration, the court finds that another hearing is necessary to develop fully the facts in this case and to give Prewitt an opportunity to explain several of his prior actions and submissions to this and other courts, as well as correspondence with judges.

It is therefore **ORDERED:**

1. That George Dunbar Prewitt appear before the court at 10:00 a.m., Thursday, June 12, 2003, in the Federal Building at 911 Jackson Avenue in Oxford, Mississippi to show cause why he should not be prohibited from entering any of the courthouses of the United States District Court for the Northern District of Mississippi in light of the documents attached to this order.

2. That George Dunbar Prewitt may subpoena witnesses for the June 12, 2003, show cause hearing.

This, the 17th day of April, 2003

/s/ Michael P. Mills
MICHAEL P. MILLS
UNITED STATES DISTRICT JUDGE

G.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

RECEIVED
May 30, 1997
Clerk, United States District Court
Northern District of Mississippi

George Dunbar Prewitt, Jr.,
in his own right and on behalf
of his minor son, R.A.P.,
EX RELATOR STATE OF MISSISSIPPI
Plaintiff

v. No. 4:97CV11-B-D

CITY OF GREENVILLE, MISSISSIPPI
and MIKE MOORE, MISSISSIPPI
ATTORNEY GENERAL
Defendants

ORDER

On February 22, 1996, this court entered an order, endorsed by all members of the court, barring the plaintiff, George Dunbar Prewitt, Jr., from filing any new actions in this court without obtaining prior court approval. Implicit in the order was an injunction barring Mr. Prewitt from participating as an advocate before this court. Such an injunction was necessary after spending a substantial amount of the court's time and various defendants' resources on Mr. Prewitt and his numerous lawsuits. Mr. Prewitt apparently spends a great deal of time and energy filing pro se lawsuits, most of which are frivolous, and which often contain claims that have already been adjudicated in a prior suit. Mr. Prewitt has badly abused his right of access to the federal court system, and therefore, the court found it necessary to enter the aforementioned injunction.

Mr. Prewitt recently filed this action in the Circuit Court of Washington County, Mississippi, but the case was subsequently removed to the Northern District of Mississippi by the defendants. However, Mr. Prewitt is no longer qualified to practice before the federal courts in the Northern District of Mississippi without prior approval. Therefore, the court finds that Mr. Prewitt, who filed this suit pro se, must have counsel to represent him in this matter; otherwise this cause should be dismissed without prejudice. While Mr. Prewitt is certainly entitled to be a client in this court, he is not authorized to be an advocate.

It is therefore **ORDERED:**

that the plaintiff is allowed thirty days from the date of this order in wihch to find counsel to represent him in this matter; and

that if no attorney qualified to practice in the Northern District of Mississippi has filed a notice of appearance on behalf of the plaintiff within said thirty days, this cause will be dismissed without prejudice. This, the 28 day of May, 1997.

/s/ Neal Biggers
NEAL B. BIGGERS, JR.,
UNITED STATES DISTRICT JUDGE